

THE MARK O. HATFIELD

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Contracts

Judge Ann Aiken granted a defense motion for summary judgment in an action seeking consequential damages for an alleged breach of contract. Plaintiff and defendant were in the business of installing fibre-optic cable and entered into negotiations for a routing project. Prior to the exchange of information, plaintiff asked defendant to sign a non-disclosure agreement to protect information exchanged during negotiations. The parties met several times, but were never able to reach an agreement on a routing project. Plaintiff filed the action asserting that the defendant misrepresented its construction plans and misappropriated plaintiff's plans for a route. Plaintiff asserted claims for breach of contract and unlawful competition under Oregon's Trade Secrets law and sought to recover lost profits.

Judge Aiken dismissed the action based upon the plain language of the non-disclosure agreement, which expressly excluded damage claims for

consequential losses. All-Phase Utility Corp. v. Williams Communications, Inc., CV 99-921-AA (Opinion, Jan., 2001).

Plaintiff's Counsel:

Fred Aebi, Janet Briggs

Defense Counsel:

Tom Sand

## Abstention

Judge Ann Aiken granted a defense motion to abstain from proceeding to the merits of a declaratory judgment action in light of a pending parallel state court action. The court explained that the "exceptional circumstances" test from the Supreme Court's Colorado River decision was inapplicable to an action filed under the federal Declaratory Judgment Act, 28 U.S.C. § 2201. Instead, Judge Aiken applied the Brillhurst discretionary standard, noting the existence of a presumption favoring abstention for declaratory judgment actions. The court also reasoned that abstention was particularly appropriate because the pending state court action involved identical, non-federal issues, and because failing to abstain could yield

inconsistent results. Barenbrug USA v. Agrono-tec Seed Co., Inc., CV 00-6174-AA (Opinion, Jan., 2001).

Plaintiff's Counsel: Jeff Love

Defense Counsel: Don Reilling

## Patent Jurisdiction

Judge Donald Ashmanskas denied a defense motion to transfer venue in an action alleging patent infringement inducement. Defendant is a New Jersey company with all of its witnesses and exhibits in New Jersey. Plaintiff is a Nevada company, but claimed it had several witnesses in Oregon and that some of its product testing and development occurred in Oregon. Also, plaintiff's lead witness and inventor is a Camas, Washington resident who is in ill-health, such that travel to New Jersey would be difficult.

Judge Ashmanskas noted that the "center of the accused activity" was the preferred forum, but found, based upon the evidence presented, that this occurred in both Oregon and New Jersey.

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The court also noted that a transfer would simply shift the burden of inconvenience from one party to the other. MSM Investments Co., LLC v. Nutratech, Inc., CV 00-1134-AS (Order, Feb. 21, 2001).  
Plaintiff's Counsel: Allen Field  
Defense Counsel:

Richard Baum; John Stevens; Kim Buckley

## Habeas

A state prisoner who entered a guilty plea to a charge of solicitation of murder claimed he received ineffective assistance of counsel in the sentencing phase because his lawyer failed to present two mitigating witness statements. Petitioner's sentence was nearly doubled based upon a post-conviction finding that the petitioner specifically asked the murderer to torture and mutilate the victim. A state post-conviction court conducted a hearing and found that, although the statements should have been submitted, there was no prejudice since the sentencing court based its upward departure decision upon several independent grounds, some of which would not have been affected by the additional evidence. Judge Anna J. Brown applied the deferential standard of review to the state court's findings and agreed that the petitioner had

failed to demonstrate prejudice. The court denied the petition. Bishop v. Hill, CV 99-1273-BR (Opinion, Feb., 2001).

Petitioner's Counsel:

Anthony Bornstein

Defense Counsel:

Douglas Park

## Civil Rights

Firefighters responded to a 911 call regarding a residential fire. When they arrived at the scene, they discovered a fire burning in a barrel in a residential back yard. They knocked on the door of the residence and the plaintiff and his wife told the firefighters that the barrel was a barbecue. Plaintiff ordered the firefighters to leave his property. Plaintiff's wife was armed and plaintiff told the firefighters that his wife had thought they were prowlers.

The firefighters contacted the police. When the police arrived, they advised plaintiff that he must allow the firefighters onto this property or they would arrest him. Plaintiff claims that the fire had gone out on its own by this time; defendants claim that plaintiff resisted arrest. Plaintiff argued that the officers used excessive force and that the arrest was unlawful because officers lacked probable cause. Defendants moved for summary judgment.

Judge Anna J. Brown held that

the officers clearly had probable cause to make the arrest for hindering the firefighters, a Class A misdemeanor under Oregon law. Thus, summary judgment was appropriate as against plaintiff's claim that his arrest violated the 4<sup>th</sup> Amendment. However, numerous disputed issues of material fact regarding the circumstances surrounding the fire, the amount of force actually employed against the plaintiff and the length and circumstances of plaintiff's detention precluded summary judgment on the remainder of plaintiff's claims under 42 U.S.C. § 1983. The court noted that because the qualified immunity defense resets upon the same reasonableness inquiry as the merits of the underlying offense, summary judgment was also inappropriate on that ground as well. Judge Brown granted summary judgment in favor of an individual defendant who was added to an amended complaint based upon a finding that the claims against the individual were time-barred and could not "relate back" to the original filing. Clavette v. Sweeney, CV 99-884-BR (Opinion, Jan. 30, 2001).

Plaintiff's Counsel:

Harrison Latto

Defense Counsel:

J. Scott Moede